

STATE OF MICHIGAN
COURT OF APPEALS

LOFGREN HARBORSIDE, INC.,

Plaintiff-Appellant,

v

DR. DENNIS R. PAULL and MARGARET M.
PAULL,

Defendants-Appellees.

UNPUBLISHED

March 2, 2004

No. 243878

Cheboygan Circuit Court

LC No. 02-007014-CH

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff and defendants own adjoining parcels of land. The legal descriptions of the parties' properties overlapped in one area, and both parties claimed ownership of the disputed property. In 2000, plaintiff filed suit against defendants claiming that it owned the disputed property and that the legal description of defendants' parcel clouded its title. Plaintiff did not assert ownership of the disputed property by adverse possession. Documentary evidence was introduced and witnesses testified as to the location of the boundary between the parties' properties. The trial court found in favor of defendants and held that defendants were the legal owners of the disputed property.¹

In May 2002, plaintiff filed suit claiming ownership of the disputed property by adverse possession. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7). Defendants argued that the compulsory joinder rule, MCR 2.203(A), required plaintiff to raise the theory of ownership by adverse possession in the original action. In addition, defendants asserted that plaintiff's action was barred by the doctrine of res judicata. In response, plaintiff

¹ Plaintiff's appeal of that decision is pending in this Court (Docket No. 240691).

argued that the doctrine of res judicata did not bar the subsequent action because title to the disputed property became an issue only after the trial court determined that defendants' deed gave them ownership of the disputed property.

The trial court granted defendants' motion for summary disposition. The court concluded that the compulsory joinder rule required plaintiff to assert its claim of ownership of the disputed property by adverse possession in the original action. Furthermore, the court found that plaintiff's claim of adverse possession was barred by the doctrine of res judicata because the claim could have been raised in the original action. Plaintiff could have stated an alternative claim to the effect that if the disputed property was not properly included in its legal description, it owned it by adverse possession.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

III. ANALYSIS

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to the facts or evidence in a prior action. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first case; and (4) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994).

The trial court correctly held that plaintiff's claim was barred by the doctrine of res judicata. The first action involved the same parties, was decided on the merits, and resulted in the entry of a judgment in favor of defendants. *Kosiel, supra*. The issue before the trial court in the first action was which party was the owner of the disputed property. Plaintiff asserted ownership of the disputed property by deed; however, it could have asserted ownership of the disputed property under the alternative theory of adverse possession. Ownership of property by deed can be defeated by a valid claim of adverse possession. See *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Resolution of plaintiff's claim of adverse possession was central to resolution of the essential issue before the trial court in the first action, i.e., which party was the true owner of the disputed property. The same facts and evidence would have sustained both claims. *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 197-198; 590 NW2d 747 (1998), aff'd 464 Mich 711; 629 NW2d 915 (2001). The trial court correctly concluded that plaintiff's claim was barred by the doctrine of res judicata. *Dart, supra; Kosiel, supra*.

Additionally, a pleader must state every claim against an opposing party that the pleader has at the time of serving the pleading if the claim arises out of the transaction or occurrence which is the subject matter of the action. MCR 2.203(A). A party may allege alternative or inconsistent claims based on the same set of facts. MCR 2.111(A)(2).

The trial court correctly held that the compulsory joinder rule required plaintiff to assert its adverse possession claim to the disputed property in the first action. The fact that plaintiff's claim of ownership of the disputed property by adverse possession was inconsistent with its claim of ownership of the disputed property by deed is of no moment. Inconsistent claims based on the same set of facts can be asserted in the same pleading. MCR 2.111(A)(2).

Affirmed.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens